

Denial

SEP 18 1981

Gentlemen:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code of 1954.

You were organized on [REDACTED] pursuant to a Code of Regulations as a condominium.

Your membership consists of each unit owner of a condominium unit within the condominium project. Your members shall hold condominium units in fee simple and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the real property.

Your income is derived from common charge assessments and vending proceeds from your members. Your expenditures have been made for the carrying out of your activities, including utilities, building maintenance and custodian services.

Section 501(c)(4) of the Code provides for the recognition of exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

It has been held that where the primary economic benefit from an organization is limited to that organization's members, the organization is not operated exclusively for the social welfare within the meaning of the statute. Consumer Farmer Milk Coop. v. Commissioner 186 F. 2d 68 (CA2; 1950), affirming 13 T.C. 150 (1949). New York State Association of Real Estate Boards Group Insurance Fund, 54 T.C. 1325, 1333 (1970).

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		E.F.O.T.A					
Surname							
Date	8/11/81	9/16/81					

In Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962), the Court held that an organization was not organized exclusively for the promotion of social welfare when its activities partake largely of the nature of an economic and private cooperative undertaking. The Court also stated that an organization seeking tax exemption under section 501(c)(4) must bring itself within the terms of the statute granting exemption to claim the benefit it affords. The Court then explained that the organization's activities, while available to all citizens eligible for membership, were not benefits municipal or public in nature. Nor were they bestowed on the community as such.

Rev. Rul. 65-201, 1965-2 C.B. 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities and maintenance services on a cooperative basis does not qualify for tax exemption under section 501(c)(12) of the Code or any provision of the Code.

The rights, duties, and privileges of members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property interests in the condominium. Condominium type ownership by its very nature necessarily entails ownership in common by all unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus, any maintenance or care of such common areas or elements constitutes private benefit to the individual homeowner members as opposed to promoting the common good and general welfare of the people of the community.

It is held that the direct economic benefit from your activities is for the benefit of your members as individuals and not for the direct benefit of the community as a whole. Accordingly, you are not primarily engaged in promoting the common good and general welfare of the people of the community. Therefore, we conclude that you are not qualified for recognition of exemption under section 501(c)(4) of the Code and you are required to file Federal income tax returns.

In accordance with this determination you are required to file Federal income tax returns. Your attention is called to section 528 of the Internal Revenue Code which provides certain procedures by which qualifying homeowners associations may elect to be treated as a tax exempt organization. This section of the Code was included in the Tax Reform Act of 1976. If you determine that you qualify under section 528, you must file Form 1120H. If you determine that you do not qualify under section 528, you must file corporate tax return Form 1120.

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Based upon the information supplied, exempt status will not be recognized under any other related section of 501(c) of the Internal Revenue Code.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office. If we do not hear from you within 30 days of the date of this letter, this determination will become final.

Sincerely yours,

District Director